

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 6112 of 2011(O&M)

Date of decision: 5.9.2019

Kamlesh and others

.....Appellants

VERSUS

Jasvir and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Manoj Taya, Advocate for the appellants.

Mr. Vikram Punia, Advocate for respondent No.1

REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against award dated 28.02.2011 passed by the Motor Accidents Claims Tribunal, Sonipat (in short 'the Tribunal') whereby application for grant of compensation on account of death of Naresh in a motor vehicular accident that took place on 18.02.2009 has been dismissed in view of findings of the Tribunal on issue No.1.

As per case of the claimants, on 18.02.2009 Naresh was riding motorcycle bearing No.HR10-K-8048. At about 3 PM, when he was in the vicinity of Sector 23, Sonipat on 100 feet road, he was hit by Mini Bus bearing No.HR69-4328. The accident was the result of rash and negligent driving of Jasvir, driver of aforesaid Mini Bus. Naresh was knocked down by the offending vehicle and sustained grievous injuries on his head, face and other parts of the body and motorcycle was badly damaged. The accident was witnessed by Naresh son of Rattan Singh who was following the deceased on another motorbike. Said Naresh is brother in law of the

deceased who shifted the deceased to Sarita Jain Hospital, Mehlaana Road, Sonapat where he was given immediate medical treatment. Since condition of deceased was precarious, he was removed to Base Hospital, Delhi and from there he was shifted to Mata Chanan Devi Hospital, New Delhi where he breathed his last on 17.04.2009. Naresh son of Rattan Singh lodged FIR No.141 dated 07.03.2009.

Driver and owner of offending vehicle filed joint written statement and averred that respondent No.1 was driving the bus in question at a moderate speed by observing the traffic rules. The accident was the direct result of careless and negligent driving of motorcycle by the deceased who while driving his motorcycle on wrong side rashly and negligently dashed against the bus in question. The First Information Report was lodged on manipulated facts in collusion with the complainant with ulterior motive.

The insurance company (IFFCO TOKIO General Insurance Company Ltd.) also filed the written statement. It is alleged that there is an inordinate delay of 17 days in lodging the First Information Report with the police. The entire version of the claimants appears to be concocted and a product of afterthought. The insurance company raised preliminary objections in respect of proper and valid driving licence with respondent No.1 and vehicle in question being plied in contravention of terms and conditions of insurance policy.

The Tribunal framed issues, reproduced in para 7 of the award. Issue No.1 reads as follows:-

“1. Whether death of Naresh took place due to rash and negligent driving of Mini Bus No.HR-69-4328 by respondent No.1? OPP”

The parties were permitted to adduce evidence in support of their respective contentions. To discharge onus of issue No.1, the claimants examined Naresh son of Rattan Singh PW-2 and Suresh Kumar PW-3. However, respondents before the Tribunal did not adduce any evidence in rebuttal.

The Tribunal, by taking into consideration that delay in lodging of FIR has not been properly explained and circumstances mentioned in sub paras (i) to (vi) of para 17 of the award also militate against involvement of Bus No.HR69-4328 in causing the accident, determined issue No.1 against the claimants and consequently the claim application was dismissed but still the Tribunal has assessed compensation to the tune of Rs.4,52,000/- while disposing of issue No.2 and 3.

Counsel for the appellants would argue that the Tribunal has proceeded to decide the proceedings for grant of compensation as if it was dealing with a criminal case wherein the prosecution is obligated to prove culpability of the accused beyond a shadow of reasonable doubt. It is argued with vehemence that since Naresh (victim of the accident) sustained serious injuries and shifted to hospital at Delhi for specialized treatment but still could not be saved, it was difficult to expect from Naresh son of Rattan Singh, brother in law of the deceased to bother about lodging of FIR in place of attending to the victim in the hospital at Delhi. It is further argued that lodging of FIR is not *sine qua non* for maintaining application for grant of compensation, therefore, failure to lodge the FIR

till 07.03.2009 cannot be construed adversely against the claimants more particularly in the circumstances that Naresh has explained as to why he could not approach the police for registration of FIR until the police approached him in Mata Chanan Devi Hospital on 07.03.2009 and recorded his statement on the basis whereof FIR No.141 dated 07.03.2009 was registered. It is further argued that driver and owner of offending vehicle filed their joint written statement and admitted the factum of accident though with the plea that same was the result of rash and negligent driving of the deceased. Another submission made by counsel is that on the basis of FIR lodged by Naresh, on due investigation, the police prepared report under Section 173 of the Code of Criminal Procedure and Jasvir Singh, driver of the offending vehicle was put to trial. It is further argued that Naresh son of Rattan Singh was examined as a prosecution witness in the criminal case and he reiterated his version recorded in the FIR even though Jasvir was eventually acquitted by the Judicial Magistrate for reasons recorded in the judgment. It is further argued that in the medical records produced by Ashwani Kumar Rai, Record Superintendent, Mata Chanan Devi Hospital, Delhi PW-5 in respect of admission of the deceased in the said hospital on 19.02.2009 till his death on 17.04.2009, there is specific reference that deceased sustained injuries in a roadside accident. It is vehemently argued that in view of oral and documentary evidence adduced by the claimants coupled with admission by driver and owner of the vehicle in respect of the accident in question and in absence of rebuttal to the evidence adduced by the claimants, findings recorded by the Tribunal on issue No.1 cannot sustain and are liable to be set aside. It

is further argued that proceedings before the Tribunal are summary in nature and do not attract strict principles of law of evidence to be applied.

Counsel for respondent No.1 has supported findings of the Tribunal on issue No.1 and the claimants being not entitle to get any compensation. It is argued that respondent No.1 was wrongly attributed rash and negligent driving and false FIR was lodged in connivance with the police. It is further argued that as a matter of fact, deceased himself was responsible for the occurrence, therefore, claimants cannot take advantage of wrong committed by the deceased.

There is no representation on behalf of respondents No.2 and 3 who failed to cause appearance despite service.

I have heard counsel for the parties, perused the paperbook and records.

Perusal of findings of the Tribunal in para 17 of the award leaves no manner of doubt that the Tribunal proceeded to decide the case in a manner as if it was deciding criminal liability of driver of the alleged offending vehicle. The Tribunal failed to appreciate that non-lodging of FIR itself cannot be a ground to reject the claim, therefore, delay in lodging the FIR may not be of consequence particularly in the circumstances of the present case that deceased sustained serious injuries and he remained unconscious throughout and eventually succumbed to the injuries sustained in the occurrence after fighting for life for a period of about 2 months despite his family got him treated from Mata Chanan Devi Hospital, New Delhi. The eye-witness to the occurrence and author of FIR dated 07.03.2009 is none else but a close relative being brother in law of deceased Naresh. Naresh PW-2 has categorically deposed that since he

remained busy in attending to the deceased in the hospital and arranging money for his treatment, he did not get time to approach the police for recording his statement until the police visited Mata Chanan Devi Hospital, New Delhi on 06.03.2009 and asked for opinion of the doctor with regard to fitness of the injured to make his statement and thereafter recorded his statement on 07.03.2009. I have gone through statement of Naresh PW-2 and find myself unable to see any reason to discard or disbelieve his testimony with regard to his being an eye witness to the occurrence. On the basis of FIR lodged by Naresh, the police conducted investigation and presented challan against Jasvir for committing offence punishable under Sections 279, 337 and 304-A of the Indian Penal Code. The said fact corroborates testimony of Naresh and version of the claimants. Not only this, the driver and owner of the vehicle did not dispute the occurrence in question because of accident between motorcycle driven by the deceased and Mini Bus of Arya Senior Secondary School, Kathmandi, Sonipat driven by Jasvir on the fateful day. Furthermore, even the insurance company in the written statement has raised a plea in reply to para 24 of the claim application that alleged accident had taken place due to rash and negligent driving on the part of deceased himself who was driving the motorcycle rashly and negligently. This apart, there is no plea much less evidence adduced by the insurance company that offending vehicle has been indicted as a result of collusion between the claimants and private respondents. Furthermore, possibility of driver of offending vehicle having agreed to lend his name at the cost of facing criminal proceedings to assist the claimants to get compensation also becomes doubtful in the circumstances that Naresh PW was a witness of the prosecution and

deposed against the accused/driver in the criminal case. The Tribunal ignored all these vital aspects and misdirected itself by failing to appreciate that proceedings before the Tribunal are summary in nature and not amenable to strict principles of law of evidence. In view of the above, I find merit in contention of the appellants that findings of Tribunal on issue No.1 are grossly erroneous and cannot sustain. That being so, findings of the Tribunal are set aside. As a result issue No.1 is answered in favour of the claimants and against the respondents therein.

This brings the Court to entitlement of claimants to get compensation and quantum of compensation. There is no dispute that claimants are the widow and two minor children of the deceased and they were dependent upon income of the deceased.

The Tribunal has assessed Rs.4,52,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.3600/-
Deduction for personal expenses	1/3 rd
Multiplier	15
Loss of dependency	Rs.4,32,000/-
Loss of consortium to the widow	Rs.10,000/-
Loss of estate	Rs.5,000/-
Expenses on last rites	Rs.5,000/-

The plea of claimants is that deceased was retired Army man and working as Security Guard on a petrol pump at Bawana at monthly pay of Rs.5000/-. He was maintaining a dairy of three buffaloes thereby earning Rs.3,000/- per month. They examined Vijay Kumar Khurana PW-4, Supervisor in CIA Services, registered at New Delhi and he proved

certificate Ex.PW4/A according to which Naresh Kumar was appointed as Security Guard (un-armed) on consolidated salary of Rs.5104/- per month. He also produced photocopy of attendance register Mark- A as evidence that Naresh Kumar attended the office from 06.02.2009 to 18.02.2009. The Tribunal, in para 27, has recorded its observations for rejecting the evidence with regard to employment and income of the deceased from CIA Services registered at New Delhi.

The deceased was born on 08.07.1969 and died on 17.04.2009. He was less than 40 years of age at the time of unfortunate occurrence. No documentary evidence was produced by the claimants with regard to the pension drawn by the deceased or pension paid to his family after his death. In absence of the claimants adducing clear evidence with regard to difference of pension paid to the deceased and the one paid to his widow or family, the claimants cannot seek benefit of difference of pension on the basis of statement of Smt. Kamlesh. Vijay Kumar Khurana, Supervisor did not produce the original attendance register nor brought the salary register. He admitted that CIA Services is a private concern. He did not produce the terms and conditions regarding employment of deceased Naresh. However, taking a clue from the minimum wage available at the relevant time coupled with that deceased was a retired Army man and less than 40 years of age, income of the deceased is assessed at Rs.4360/-. Claimants shall be entitle to addition in income for future prospects at the rate of 40%. Deduction for personal expenses and multiplier allowed by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,32,480/- [Rs.7,84,800/- (Rs.4360/- x 12 x 15) +

Rs.3,13,920/- (40% addition towards future prospects) - Rs.3,66,240/-
(1/3rd deduction towards personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- detailed hereunder:-

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss to estate	Rs.15,000/-

In view of the above, total compensation is Rs.8,02,480/- payable with interest at the rate of 7.5% per annum from the date of petition till realization, to be shared by the claimants in equal proportion. The amount falling to share of minors shall be invested in fixed deposit till they attain majority or for a period of three years, whichever is later.

The respondents being the driver, owner and insurer of the offending vehicle would be jointly and severally liable to pay compensation.

In view of what has been discussed hereinbefore, the appeal is allowed. Application for grant of compensation is allowed in the aforesaid terms.

SEPTEMBER 5, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no